

# **Exhibit A**

## **Zuffa's Notice of Supplemental Authority**

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Ultimate Fighting Championship and UFC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

18 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
19 Vera, Luis Javier Vazquez, and Kyle  
20 Kingsbury on behalf of themselves and all  
21 others similarly situated,

21 Plaintiffs,  
v.

Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,

Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**DEFENDANT ZUFFA, LLC'S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY REGARDING  
ZUFFA'S MOTION TO EXCLUDE  
TESTIMONY OF DR. SINGER  
(ECF No. 524).**

1       On June 25, 2018 the Supreme Court decided *Ohio v. American Express Co.*, -- S. Ct. --,  
 2 2018 WL 3096305 (2018) (“Amex”). Among other things, *Amex* made clear a previously  
 3 uncertain area of antitrust law – in order to prove anticompetitive effects of a vertical restraint,  
 4 plaintiffs are required to define a market. This decision impacts the Court’s assessment of  
 5 Zuffa’s Motion to Exclude the Testimony of Dr. Singer (ECF No. 524) because Plaintiffs  
 6 opposed that motion, in part, by arguing that defining a market was *not* necessary when direct  
 7 evidence is available. Opposition to Singer *Daubert* (“Singer *Daubert* Opp.”) ECF No. 534 at 37  
 8 n.61. That argument is now invalid after *Amex*.

9       In *Amex*, the Supreme Court considered whether plaintiffs (the United States and 17  
 10 states) had met their burden of proving that Amex’s non-discrimination provisions in its contracts  
 11 with merchants caused anticompetitive effects in the credit-card market. *Amex*, 2018 WL  
 12 3096305 at \*7. A key question on appeal was the scope of the relevant market and whether the  
 13 district court had properly assessed the impact of the challenged provisions on both sides of the  
 14 relevant market. *Id.* at \*8. Relying solely on direct evidence to prove anticompetitive effects,  
 15 Plaintiffs argued they were not required to define a market because they instead “offered actual  
 16 evidence of adverse effects on competition – namely, increased merchant fees.” *Id.* at \*8 n.7.  
 17 The Supreme Court rejected this argument.

18       The Court made clear that unlike unlawful horizontal restraints which involve agreements  
 19 between competitors and thereby do not always require plaintiffs to define a market, “vertical  
 20 restraints are different.” *Id.* “Vertical restraints often pose no risk to competition unless the  
 21 entity imposing them has market power, which cannot be evaluated unless the Court first defines  
 22 the relevant market.” *Id.* As a result, even where a plaintiff relies “exclusively on direct  
 23 evidence” in order “to assess this evidence, [the Court] must first define the relevant market.” *Id.*

24       In Plaintiffs’ Opposition to Zuffa’s Motion to Exclude the Testimony of Dr. Singer,  
 25 Plaintiffs contend that defining a market is not necessary when they can demonstrate direct  
 26 effects. Singer *Daubert* Opp. at 37 & n.61. Plaintiffs put forward Dr. Singer’s impact regression  
 27 as direct evidence of market power and claim that “market definition is only necessary for  
 28 indirect proof of market power.” *Id.* Dr. Singer’s impact regression purportedly measures the

1 effect on wage share from an increase in the share of athletes who have signed contracts  
2 containing the challenged contractual provisions. Because those provisions involve an agreement  
3 between athletes and promoters, those provisions are vertical in nature. Dr. Singer's regression  
4 therefore cannot be accepted as direct evidence of anticompetitive effects without additional  
5 evidence that Dr. Singer's analysis is based on a properly defined relevant market.

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7 Dated: July 5, 2018

Respectfully Submitted,

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9 BOIES SCHILLER FLEXNER LLP

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12 By: /s/ Nicholas A. Widnell

13 Nicholas A. Widnell

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15 *Attorneys for Defendant Zuffa, LLC, d/b/a*  
16 *Ultimate Fighting Championship and UFC*

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19 **CERTIFICATE OF SERVICE**

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17 /s/ Roderick Crawford

18 An employee of Boies Schiller Flexner